

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICHARD CRUZ,

Petitioner,

v.

// CIVIL ACTION NO. 1:09CV60  
CRIM. ACTION NO. 1:07CR68  
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. 16)  
AND DISMISSING 28 U.S.C. § 2255 PETITION WITH PREJUDICE

On November 1, 2010, the Honorable David J. Joel, United States Magistrate Judge, entered a Report and Recommendation ("R&R"), concluding that this 28 U.S.C. § 2255 petition filed by the pro se petitioner, Richard Cruz, should be dismissed with prejudice because of a valid waiver of habeas rights contained in Cruz's plea agreement. Cruz filed no objection to the R&R, and the time to do so has expired. Accordingly, the Court **ADOPTS** the R&R (dkt. 16) in its entirety, **DENIES** the petition for a writ of habeas corpus, and **DISMISSES** this case **WITH PREJUDICE**. The Court declines to issue a certificate of appealability because Cruz raises no colorable claim of denial of a constitutional right.

It is so **ORDERED**.

The Court directs the Clerk to prepare a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner via certified mail, return receipt requested.

DATED: March 16, 2011.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE